

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1695 w/CS Department of Financial Services
SPONSOR(S): Negron
TIED BILLS: none **IDEN./SIM. BILLS:** SB 2994 (s)

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|----------------|---------|----------------|
| 1) Insurance Regulation (Sub) | 8 Y, 0 N | Tinney | Cooper |
| 2) Insurance | 17 Y, 0 N w/CS | Tinney | Cooper |
| 3) State Administration | 7 Y, 0 N w/CS | Bond | Everhart |
| 4) Commerce & Local Affairs Approp. (Sub) | | | |
| 5) Appropriations | | | |

SUMMARY ANALYSIS

This bill with CS, regarding the Department of Financial Services (DFS):

- Transfers regulation of insurance adjusters from the Office of Insurance Regulation (OIR) to DFS.
- Provides that the CFO may also be referred to as the Treasurer, the Directors of the Office of Insurance Regulation and the Office of Financial Regulation may be referred to as Commissioners.
- Requires every state agency to deposit proceeds from any claim brought on behalf of the state into the State Treasury unless the proceeds are designated as restitution.
- Adds the Commissioner of Agriculture to the membership of the Florida Financial Management Information Board (FFMIB) and the FFMIB Coordinating Council.
- Extends the July 1, 2004, sunset date for the Enterprise Resource Planning Integration Task Force to July 1, 2008.
- Provides that the CFO may provide accounting and payroll services to state and local governmental entities on a fee basis.
- Allows the state to enter into guaranteed energy performance savings contracts for up to 10 years.
- Makes a number of clarifying changes to statutes regarding the CFO.

This bill also amends the Deceptive and Unfair Trade Practices Act to provide that the act does not apply to certain real property leases.

This bill does not appear to have a fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1695d.sa.doc
DATE: April 19, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

In November 1998, the voters of Florida amended the Florida Constitution, in s. 4 of Article IV, to merge two former cabinet positions, the Comptroller and the Treasurer, into a single cabinet officer, the Chief Financial Officer. Prior to the amendment, the Comptroller was responsible for payment of debts on behalf of executive agencies, along with the regulation of banking within Florida. The former Treasurer was responsible for management of the state’s cash assets, including investment of those monies to maximize interest income. The Treasurer also was designated by law as the State Fire Marshal and as head of the former Department of Insurance.

In the 2002 Regular Legislative Session, the Legislature combined the responsibilities of the former Departments of Insurance and Banking and Finance into the present Department of Financial Services (DFS). DFS is headed by the Chief Financial Officer (CFO), a member of Florida’s three-member Cabinet. Provisions creating DFS and its organizational structure are codified in s. 20.121, F.S.

The law creating DFS also designates the Governor, CFO, Commissioner of Agriculture, and Attorney General, i.e., the Governor and Cabinet, as the Financial Services Commission (the Commission.) The Commission is a separate, independent budget entity within DFS. The Commission administers both the Office of Insurance Regulation (OIR) and the Office of Financial Regulation (OFR). Both OIR and OFR are headed by a director appointed by three affirmative votes of the Commission, including a requirement that both the Governor and the CFO vote on the prevailing side.

Twelve divisions are established within DFS: (1) Accounting and Auditing, (2) State Fire Marshal, (3) Risk Management, (4) Treasury, (5) Insurance Fraud, (6) Rehabilitation and Liquidation, (7) Insurance Agents and Agency Services, (8) Consumer Services, (9) Workers’ Compensation, (10) Administration, (11) Legal Services, and (12) Information Services.

Prior to the passage of the Cabinet Reorganization bill, the Division of Agent and Agency Services of the former Department of Insurance regulated insurance adjusters (adjusters employed by insurers and public insurance adjusters). As part of the organization of DFS, regulation of adjusters was included in the scope of regulatory matters assigned to the OIR, effectively moving the regulation of adjusters from DFS to the new OIR.

The creation and organization of DFS assigns to OIR the regulation of “risk bearing entities” i.e., insurance companies and entities. DFS administers and enforces the licensing and regulation of individuals authorized to transact insurance business in Florida. As such, DFS, rather than OIR, generally possesses the infrastructure, technology, and institutional expertise associated with

regulating individuals licensed as insurance agents and insurance adjusters. For this reason, DFS suggests that it, rather than OIR, is the most appropriate agency to manage the licensing program, continuing education program, and licensure compliance requirements of the more than 30,000 adjusters currently licensed in Florida.

Effect of Bill

This bill with CS amends various sections of the Florida Insurance Code to comply with the governmental reorganization that combined the former Department of Insurance with the Department of Banking and Finance. The bill corrects statutory references, conforms language, and renumbers and transfers sections, specifically:

- Amends s. 501.212, F.S., to clarify a reference to DFS.
- Amends s. 516.35, F.S., to correct a reference to a person duly licensed to market credit insurance as a person licensed by DFS, rather than by OIR.
- Amends s. 626.9543, F.S., to delete the definition of “department” as the “Department of Insurance.”
- Amends s. 626.989, F.S., to correct a reference to “bureau”, rather than “office,” within the Division of Insurance Fraud.
- Amends s. 627.285, F.S., to clarify that OIR shall contract for independent actuarial peer review for ratemaking in workers compensation insurance.

The bill removes the reference to the regulation of adjusters by OIR in s. 20.121, F.S., and conforms laws regulating adjusters in chapter 626, F.S., to regulation by the “department,” i.e., DFS. As to adjuster regulation, the bill:

- Amends 20.121 to strike the word “adjuster” from the scope of responsibilities assigned to the OIR.
- Amends various sections of chapter 626, F.S., to conform to adjuster regulation by DFS.
- Transfers and renumbers s. 627.879, F.S., related to adjuster pools, to s. 626.879, F.S.
- Provides for the transition of rules and authorities related to matters in current action by the OIR or DFS that may result from the transfer of adjuster regulation to DFS.

The bill with CS also amends appointments within the DFS, specifically:

- Amends s. 110.1227, F.S., to provide that the director of OIR, rather than the CFO, will make the OIR Actuary appointment to the Florida Employee Long Term Care Plan Board.
- Amends s. 408.05, F.S., to provide that the director of OIR, rather than the CFO, will make the OIR employee appointment to the State Comprehensive Health Information System Advisory Council.
- Amends s. 627.0628, F.S., to provide that the director of OIR, rather than the CFO, will make the OIR Actuary appointment to the Hurricane Loss Projection Methodology Commission.
- Amends s. 627.6699, F.S., to provide that the director of OIR, rather than the CFO, shall appoint members to the Board of the Small Employer Health Reinsurance Program.

- Amends ss. 215.95 and 215.96, F.S., to add the Commissioner of Agriculture to serve on both the FFMS Board and Coordinating Council.¹

This bill with CS also makes miscellaneous changes to laws regarding the CFO:

- Amends s. 215.31, F.S., to require every state official, agency, affiliate, office, and the judicial branch to deposit any funds resulting from the settlement of a claim brought on behalf of the state immediately into the State Treasury; except that any claim settlement that is designated as restitution must be transmitted promptly to the affected person.
- Amends s. 215.96, F.S., to extend the July 1, 2004, sunset date for the Enterprise Resource Planning Integration Task Force to July 1, 2008.
- Creates s. 17.0416, F.S., to provide that the CFO may provide payroll and accounting services to universities, community colleges, local governments, and any other entity holding state funds. The CFO may charge a fee for these services.
- Amends s. 17.57, F.S., to allow the CFO to invest state monies in “reverse repurchase agreements”
- Amends s. 17.59, F.S., to re-characterize safekeeping services by the CFO as “collateral management services”, and to specify the types of collateral that may be managed by the CFO. The section also repeals certain specified fees related to safekeeping services.
- Amends s. 17.61, F.S., to provide that all funds of any state entity, including a constitutionally created entity, must be invested with the CFO.
- Amends s. 112.215, F.S., to provide that the deferred compensation plan must be self-funded, and that administrative costs of the plan must be paid by the investment providers, who may pass on the costs to participants.
- Amends s. 287.064, F.S., to allow financing of costs pursuant to a guaranteed energy performance savings contract for up to 10 years.

This bill with CS also amends the Deceptive and Unfair Trade Practices Act to provide exceptions to the act regarding certain real property leases, by which certain persons may not file suit under the Deceptive and Unfair Trade Practices Act. One exception is added for the parties to a commercial lease if the lease contains a provision for the award of damages, attorney's fees, and costs. Another exception is added for the parties to any lease if the lawsuit is one that concerns maintenance of real property, there are provisions of law that specifically require the owner of the property to comply with applicable building, housing, and health codes and maintain common areas in a good state of repair, appearance, safety, and cleanliness, and if the owner's failure to comply may result in legal or equitable remedies, including the award of attorney's fees. The two exceptions do not apply to actions under the Deceptive and Unfair Trade Practices Act instituted by the Attorney General.

C. SECTION DIRECTORY:

¹ The Florida Financial Management Information Systems Act (FFMIS) provides that the Legislature intends for the executive branch, in consultation with the legislative fiscal committees, to develop and implement FFMIS, as an integrated system, to be the primary means by which state government manages its financial affairs, including budgeting, accounts payable, payroll, and other similar financial functions. The FFMIS Board and Coordinating Council are the policy bodies that oversee the activities and implementation of FFMIS. Currently, the Governor, Attorney General, and CFO sit on both boards.

Section 1 amends s. 17.16, F.S., to authorize the CFO to adopt a seal for use in authenticating official documents.

Section 2 amends s. 20.121, F.S., to repeal a reference to the regulation of insurance adjusters by OIR. The law also is amended to authorize the CFO to be referred to as the Treasurer; the directors of the Office of Insurance Regulation and the Office of Financial Regulation may be referred to as the Commissioners of Insurance Regulation and Financial Regulation, respectively.

Section 3 amends s. 110.1227, F.S., to provide that the director of OIR, rather than the CFO, will make the OIR Actuary appointment to the Florida Employee Long Term Care Plan Board.

Section 4 amends s. 408.05, F.S., to provide that the director of OIR, rather than the CFO, will make the OIR employee appointment to the State Comprehensive Health Information System Advisory Council.

Section 5 amends s. 501.212, F.S., to clarify a reference to DFS, and to amend the Deceptive and Unfair Trade Practices Act to provide that the act does not apply to certain real property leases.

Section 6 amends s. 516.35, F.S., to correct a reference to a person duly licensed to market credit insurance as person licensed by DFS, rather than by OIR.

Section 7 amends s. 624.313, F.S., to specify that DFS may prepare and publish various pamphlets and other brochures as needed.

Sections 8 to 68 amend chs. 624, 626, and 627, F.S., to conform to the change in regulation of insurance adjusters from OIR to DFS.

Section 69 amends s. 627.0628, F.S., to clarify that the CFO appoints five, rather than six, members to the Florida Commission on Hurricane Loss Projection Methodology and that an employee of OIR, who is an actuary, also sits on the commission.

Section 70 amends s. 627.285, F.S., to clarify that OIR, rather than DFS, shall contract for independent actuarial peer review for ratemaking in workers' compensation insurance.

Section 71 amends s. 627.6699, F.S., to clarify that the director of OIR, rather than the CFO, serves as chair of the Small Employer Health Reinsurance Program and, as such, is responsible for appointing the 13 members of the board of the program.

Section 72 provides that the transfer of the regulation of insurance adjusters from OIR to DFS does not affect any ongoing administrative or judicial proceedings affecting adjusters.

Section 73 provides that any license, form, or action that was in effect or approved prior to this bill becoming law will be unaffected by the provisions of this bill.

Section 74 provides that rules regulating insurance adjusters adopted by the Financial Services Commission in effect before this bill becomes law remain in effect as rules of DFS until such rules are specifically amended or repealed.

Section 75 amends s. 215.31, F.S., to require every state agency and other state affiliate to deposit the proceeds from any claim brought on behalf of the state into the State Treasury, unless the proceeds are designated as restitution.

Section 76 amends s. 215.95, F.S., to add the Commissioner of Agriculture to the Florida Financial Management Information Board.

Section 77 amends s. 215.96, F.S., to add the Commissioner of Agriculture to the Florida Financial Management Information Board Coordinating Council. Also postpones the July 1, 2004, "sunset" date for the Enterprise Resource Planning Integration Task Force to July 1, 2008.

Section 78 creates s. 17.0416, F.S., to provide that the CFO may provide payroll and accounting services to universities, community colleges, local governments, and any other entity holding state funds. The CFO may charge a fee for these services.

Section 79 amends s. 17.57, F.S., to allow the CFO to invest state monies in "reverse repurchase agreements"

Section 80 amends s. 17.59, F.S., to re-characterize safekeeping services by the CFO as "collateral management services", and to specify the types of collateral that may be managed by the CFO. The section also repeals certain specified fees related to safekeeping services.

Section 81 amends s. 17.61, F.S., to provide that all funds of any state entity, including a constitutionally created entity, must be invested with the CFO.

Section 82 amends s. 112.215, F.S., to provide that the deferred compensation plan must be self-funded, and that administrative costs of the plan must be paid by the investment providers, who may pass on the costs to participants.

Section 83 amends s. 287.064, F.S., to allow financing of costs pursuant to a guaranteed energy performance savings contract for up to 10 years.

Section 84 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not affect a state revenue source.

2. Expenditures:

None. The Department of Financial Services indicates that the changes required by this bill will not affect department expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect local governments.

2. Expenditures:

None. This bill does not affect local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None. This bill does not affect local governments.

2. Other:

Article III, s. 6, Fla.Const., requires that “[e]very law shall embrace but one subject and matter properly connected therewith”. It is unclear whether there is a sufficient nexus between the sections of this bill.

B. RULE-MAKING AUTHORITY:

This bill with CS appears to contain sufficient rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The effective date of this bill with CS is upon becoming law. Typically, a change of this magnitude would be done on a date certain, usually on the start of the new fiscal year.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 1, 2004, the Committee on Insurance passed the bill as a CS. The committee adopted amendments that:

- The bill with CS adds s. 17.16, F.S., to the bill to clarify that the state’s Chief Financial Officer may establish an official seal for use on official acts and documents.
- The bill with CS further amends s. 20.121, F.S., to authorize the CFO to be referred to as the Treasurer and authorizes the Director of the Office of Insurance Regulation and the Director of the Office of the Office of Financial Regulation to be referred to as the Commissioner of Insurance Regulation and the Commissioner of Financial Regulation, respectively.
- The bill with CS adds s. 215.31, F.S., to the bill for amendment to require every state agency and other state affiliate to deposit the proceeds from any claim brought on behalf of the state into the State Treasury, unless the proceeds are designated as restitution.
- The bill with CS adds ss. 215.95 and 215.96 F.S., to the bill to add the Commissioner of Agriculture to the membership of the Florida Financial Management Information Board (FFMIB) and the FFMIB Coordinating Council, respectively. It postpones the July 1, 2004, “sunset” date for the Enterprise Resource Planning Integration Task Force to July 1, 2008, to enable the task force to continue its assigned task of coordinating the state’s financial and accounting information systems. The work of the task force is expected to last for several more years.

On April 14, 2004, the Committee on State Administration adopted 8 amendments to this bill. The amendments:

1. Amend the provision in the bill regarding deposits of lawsuit settlement proceeds to clarify language.
2. Create a new section of law to provide that the CFO may provide payroll and accounting services to universities, community colleges, local governments, and any other entity holding state funds. The CFO may charge a fee for these services.

3. Allow the CFO to invest state monies in “reverse repurchase agreements”.
4. Change “safekeeping” or property by the CFO to “collateral management”, and to specify the authorized forms of collateral management.
5. Provide that all state entities, including constitutional entities, must deposit all funds with the CFO.
6. Provide that the deferred compensation plan must be self-funded. Administrative costs of the plan must be paid by the investment providers, who may pass on the costs to participants.
7. Allow 10 year financing of costs pursuant to a guaranteed energy performance savings contract
8. Amends the Deceptive and Unfair Trade Practices Act to provide that the act does not apply to certain real property leases.

The bill with CS was then reported favorably with a committee substitute.